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10 **UNITED STATES BANKRUPTCY COURT**

11 **DISTRICT OF NEVADA**

12 In re: Case No. BK-S-17-12642-MKN
 13 EB HOLDINGS II, INC., a Nevada corporation, Chapter 11 (Involuntary)
 14 Alleged Debtor.
 15

Date: N/A

Time: N/A

16 **STIPULATION BY AND BETWEEN EB HOLDINGS II, INC. AND**
 17 **PETITIONING CREDITORS FOR RELIEF FROM THE AUTOMATIC STAY**

18 EB Holdings II, Inc., a Nevada corporation (“EB Holdings”), the alleged debtor in the
 19 above-captioned case, petitioning creditors GoldenTree Master Fund, Ltd., Kneiff Tower
 20 S.A.R.L., Mount Kellett Master Fund II-A, LP, Grace Bay III Holdings S.A.R.L., Arvo Investment
 21 Holdings S.A.R.L., and Sound Point Montauk Fund L.P. (collectively, “Petitioning Creditors”)
 22 and together with a group of alleged holders of interests in a payment-in-kind loan (“PIK Loan”)
 23 dated March 23, 2007,¹ by and through their respective counsel of record, hereby stipulate and
 24 agree as follows:
 25

26 _____
 27 ¹ This description of the parties hereto is made in the interest of brevity and is not intended as an admission
 28 by EB Holdings that any one of the Petitioning Creditors is a lender to EB Holdings or that the GLAS USA LLC,
 in its capacity as successor administrative agent (“Administrative Agent”), was properly appointed. EB Holdings
 reserves its right to contest the standing of the Petitioning Creditors and/or the Administrative Agent.

1 A. RECITALS.

2 1. On August 26, 2016, Petitioning Creditor GoldenTree Master Fund, Ltd.
 3 ("GoldenTree") filed a Complaint in the Clark County District Court (the "State Court"),
 4 commencing Case No. A-16-742507-B (the "GoldenTree Action"), which the other Petitioning
 5 Creditors herein, along with certain of their affiliated funds (Alcentra Global Special Situations
 6 Luxembourg S.A.R.L.; Alcentra MS S.A.R.L.; Clareant SCF S.A.R.L.; Sound Point Credit
 7 Opportunities Master Fund, L.P.; SPC LUX S.A.R.L.; Vista Fund I, L.P.; and Vista Fund II, L.P.
 8 (collectively with GoldenTree, the "Plaintiffs"), joined on September 9, 2016,² naming as
 9 defendants EB Holdings, its directors, Howard M. Meyers and Albert Lospinoso, and its affiliate
 10 QXH II, Inc.³

11 2. On October 24, 2016, EB Holdings filed a Complaint against Plaintiffs (the "EB
 12 Holdings Complaint"), commencing Case No. A-16-745669-B in the State Court (the "EB
 13 Holdings Action").

14 3. Thereafter, EB Holdings answered the GoldenTree Action on January 13, 2017,
 15 denied all liability and asserted counterclaims and third party claims against Plaintiffs and 17
 16 additional entities affiliated with GoldenTree (the "Third Party Defendants").

17 4. On December 15, 2016, the Court entered its *Order Granting Plaintiffs' Motion to*
 18 *Coordinate Cases on Order Shortening Time*, coordinating, but not consolidating, the EB Holdings
 19 Action with the GoldenTree Action (together, the "Coordinated Actions").

20 5. On January 20, 2017, the parties in the Coordinated Actions submitted their *Joint*
 21 *Case Conference Report* (the "JCCR"), and on January 27, 2017, the State Court entered the
 22 *Business Court Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial Conference and*
 23 *...*

25 2 EB Holdings believes that certain of the claims asserted by the Plaintiffs would be property of the
 26 bankruptcy estate in the event an order for relief was entered. For avoidance of doubt, no claims are assigned or
 27 waived pursuant to this Stipulation, nor does any party hereby waive or intend to prejudice any rights with respect
 28 to the GoldenTree Action.

3 Eco-Bat Technologies, Ltd. ("Eco-Bat"), Quexco Inc. ("Quexco"), and RSR Corp. ("RSR"), initially
 28 named as defendants, were dismissed from the GoldenTree Action for lack of personal jurisdiction.

1 *Calendar Call* (“Scheduling Order”) requiring compliance with the deadlines set forth in the JCCR
 2 and setting trial on a five-week stack commencing April 16, 2018.

3 6. Discovery is ongoing in the Coordinated Actions.

4 7. In addition to the Coordinated Actions, the following appeals are pending before
 5 the Nevada Supreme Court (the “Appeals”): (i) Plaintiffs’ appeal of the State Court’s *Order*
 6 *Denying Defendants’ Special Motion to Dismiss Entire Complaint Pursuant to NRS 41.660* in the
 7 EB Holdings Action, Appeal No. 72369; and (ii) Plaintiffs’ and the Third Party Defendants’ appeal
 8 of the State Court’s *Order Regarding Pending Special Motion to Dismiss EB Holdings’ Entire*
 9 *Counterclaim and Third-Party Complaint*, entered on April 17, 2017, and its *Order Denying*
 10 *Special Motion to Dismiss EB Holdings II, Inc.’s Counterclaim and Third-Party Complaint*
 11 *Pursuant to NRS 41.660* in the GoldenTree Action, Appeal No. 73111 .

12 8. On May 18, 2017, the Petitioning Creditors commenced the involuntary petition
 13 against EB Holdings under chapter 11 of Title 11 of the United States Code (the “Bankruptcy
 14 Code”), thereby commencing the above-captioned involuntary bankruptcy case (the “Involuntary
 15 Case”).

16 9. The parties hereto have agreed to modify the automatic stay to allow continued
 17 litigation of the Coordinated Actions, including the Appeals, solely during the period prior to an
 18 entry of order for relief in the Involuntary Case or dismissal of the Involuntary Case (the “Gap
 19 Period”); provided, however, that in the event any monetary judgment is entered against EB
 20 Holdings prior to the dismissal of the Involuntary Case, collection of any monetary sum from EB
 21 Holdings shall be prohibited without further order of the Court.

22 **B. STIPULATION.**

23 1. The automatic stay imposed by 11 U.S.C. § 362(a) shall be modified to allow
 24 continued litigation of the Coordinated Actions, including the Appeals, solely during the Gap
 25 Period; provided, however, that in the event any monetary judgment is entered against EB
 26 Holdings prior to the dismissal of the Involuntary Case, collection of any monetary sum from EB
 27 Holdings shall be prohibited without further order of the Court.

28

1 2. Except as expressly set forth herein, nothing in this Stipulation shall affect or
 2 prejudice any rights, claims, or defenses of the parties of any kind or nature whatsoever (including,
 3 without limitation, the rights of parties to remove any of the Coordinated Actions or seek remand
 4 or abstention with respect to any of the Coordination Actions). All such rights are expressly
 5 reserved; nothing herein shall prejudice such rights, claims, or defenses.

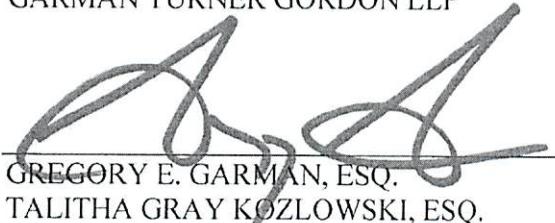
6 3. The Court shall retain jurisdiction over this Stipulation and the order approving this
 7 Stipulation in order to resolve any dispute in connection with the rights and duties specified
 8 hereunder and thereunder.

9 Now, therefore, the parties hereto request that the Court enter the proposed Order attached
 10 hereto as **Exhibit 1**, approving this Stipulation.

11 DATED this 14 day of June 2017.

12 PREPARED AND SUBMITTED:

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